IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

Crl.MC.No. 581 of 2007()

CC.552/2004 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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PETITIONER: ACCUSED NO.3

SANTHOSH, S/O.BALAKRISHNAN,
PONATH, AZHEEKODE.

BY ADV. SRI.T.M.CHANDRAN
SRI.V.A.SASIDHARAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 05/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.581 of 2007

Dated this the 5th day of March 2007

O R D E R

The petitioner is the third accused in a prosecution interalia under Sections 323 and 427 read with 149 I.P.C. He faces allegations along with six other accused. Accused 1,2 and 4 to 7 were available for trial. They stood trial. The learned Magistrate, by Annexure-I judgment came to the conclusion that all the accused who faced trial are entitled to be acquitted. The learned Magistrate took note of the defects in the prosecution case. The complaint was belated. There was no injury whatsoever suffered by the victim. All the accused were relatives of the wife of PW1. The learned Magistrate, in paragraph 15, has entered the following finding:

> "The above defects in the prosecution case has to be viewed in view of the fact that there is a marital dispute between PW1 and his wife and the accused are the parents and relatives of the wife of PW1. It probabilizes the case of the accused that the case was fabricated due to the marital dispute pending between PW1 and his wife. The prosecution failed to prove the case beyond doubt. Hence the accused are entitled for an acquittal."

2. The learned counsel for the petitioner points out that there is no semblance of an allegation even of any specific overt act against the petitioner. In the circumstances, there cannot be an allegation now that the petitioner was a member of any unlawful assembly. No allegation of having committed any offence principally has been raised against the petitioner. In these circumstances, on the basis of the findings already recorded which have become final, the continuance of the prosecution will be traversity of justice or transparent abuse of the process of the court. The learned counsel for the petitioner submits that even the learned Magistrate invoking the powers under Rule 16 of the Kerala Criminal Rules and Practice must have recorded the finding that the allegation against the petitioner herein also being totally and wholly false, further proceedings in the case can be discontinued.

3. The learned counsel for the petitioner submits that the dictum in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] does not in any way bar the relief claimed in the petition in as much as there is a positive finding that the strain in the marital tie has prompted the defacto complainant to make

fabricated allegations against the accused persons including the petitioner herein. The mere acquittal of the co-accused for paucity of evidence in the trial held against them is certainly no ground for the co-accused to claim any advantage or benefit on the basis of such acquittal. But in the facts and circumstances of this case, the petitioner is not relying on the evidence adduced in the case but the finding that the allegations are false and fabricated due to marital disputes pending between PW1 and his wife may not be ignored by this court, urges the learned counsel for the petitioner.

4. Having considered all the relevant inputs and having gone through the entire materials relied on by the prosecution against the petitioner and the conclusions reached by the learned Magistrate in Annexure-IV judgment, I am satisfied that this is an eminently fit case where powers under Section 482 Cr.P.C can safely be invoked. The dictum in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] does not bar the invocation of such powers in the peculiar facts and circumstances of this case.

5. In the result, this Criminal Miscellaneous Case is allowed. C.C.No.552/2004 pending before the Judicial First Class Magistrate Court, Kodungallur against the petitioner is hereby quashed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006